AMENDED IN ASSEMBLY APRIL 23, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 2949

Introduced by Assembly Member Harvey

February 23, 1996

An act to amend Sections 44010 and 87010 of the Education Code, to amend Section 51032 of the Government Code, to amend Sections 266a, 266e, 647, 647f, 647.1, 653.22, 784, 1001.10, and 1202.6 of the Penal Code, and to amend Section 22659.5 of the Vehicle Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2949, as amended, Harvey. Prostitution.

(1) Existing law makes it a misdemeanor to solicit or agree to engage in or to engage in any act of prostitution, which includes any lewd act between persons for money or other consideration. Existing law provides that no agreement to engage in prostitution shall violate this provision unless the person does some act in furtherance of the agreement.

This bill would enact the Prostitution Abatement and Neighborhood Protection Act of 1996. The bill would revise the definition of prostitution by deleting the requirement that a person do some act in furtherance of the agreement to engage in prostitution. The bill would provide that prostitution include any sexual conduct, rather than any lewd act, for money or other consideration.

This bill would provide that a person first convicted of prostitution shall be punished by imprisonment in a county

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jail for a period of not less than 3 months and that a person convicted of a subsequent violation shall be punished by imprisonment in the state prison for a period not less than one year. The bill would provide for an enhanced punishment for a violation occurring within 1,500 1,000 feet of a home, school, church, park, or business private residence or a school. The bill would authorize the judge to impose a fine to be paid to the arresting law enforcement agency in addition to this punishment.

By increasing the penalties for existing crimes, the bill would impose a state-mandated local program.

(2) Existing law authorizes, until January 1, 1999, specified cities, counties, and portions of cities to adopt an ordinance establishing a pilot program implementing procedures for declaring any motor vehicle a public nuisance when used in the commission of an act of prostitution, and there is a conviction of the underlying offense, except in specified circumstances. Existing law authorizes the ordinance to include procedures, as prescribed, to enjoin and abate the declared nuisance.

This bill would add the County of Kern and any city in that county to the list of cities and counties authorized to adopt this ordinance.

The bill would also make conforming changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited
- 2 as the "Prostitution Abatement and Neighborhood
- 3 Protection Act of 1996."
- 4 SEC. 2. Section 44010 of the Education Code is
- 5 amended to read:

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44010. "Sex offense," as used in Sections 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

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- (a) Any offense defined in Section 261.5, 264.1, 266, 267, 285, 286, 288, 288a, 289, 311.3, 311.4, 313.1, 647.6, or former Section 647a, subdivision (a), (b), or (c) of Section 243.4, paragraph (1), (2), (3), or (4) of subdivision (a) of Section 261, subdivision (b) of Section 311.2, or paragraph (1) or (4) of subdivision (a) of Section 647 of the Penal Code.
- (b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined 14 in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
 - (c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
 - (d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.
 - (e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
 - (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
 - (g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

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(h) Any of attempt to commit any the above-mentioned offenses.

- (i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to 9 Section 290 of the Penal Code.
- SEC. 3. Section 87010 of the Education Code is 10 11 amended to read:
- 12 87010. "Sex offense," as used in Sections 87405, 88022, 13 and 88123, means any one or more of the offenses listed 14 below:
 - (a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647.6, or former Section 647a, subdivision 2 or 3 of Section 261, or paragraph (1) or (4) of subdivision (a) of Section 647 of the Penal Code.
- (b) Any offense defined in former subdivision 5 of 20 former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined 22 in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- 28 (c) Any offense defined in Section 314 of the Penal 29 Code committed on or after September 15, 1961.
 - (d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.
- 34 (e) Any offense involving lewd and lascivious conduct 35 under Section 272 of the Penal Code committed on or 36 after September 15, 1961.
 - (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if the offense was committed prior to September 15, 1961,

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to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

- (g) Any offense defined in Section 286 or 288a of the 5 Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- of (h) Any attempt to commit any the 10 above-mentioned offenses.

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- (i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.
- SEC. 4. Section 51032 of the Government Code is 15 16 amended to read:
- 51032. The ordinance may also provide that a license 18 to engage in the business of massage may be denied upon a showing by the licensing authority of any of the following:
- (a) Proof that the massage personnel and the owners 22 or operators of a massage business have been convicted of a violation of Section 266i, 315, 316, 318, or paragraph 24 (2) of subdivision (a) of Section 647 of the Penal Code, proof that the massage personnel or the owners or operators of a massage business have been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses of this subdivision, or proof that the massage personnel or the owners or operators of a massage business are required to register under the provisions of Section 290 of the Penal Code.
- (b) Proof that the massage personnel and the owners 35 or operators of a massage business have been convicted 36 of any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code or proof that the massage personnel or the owners or operators of the massage business have been convicted in any other state

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of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses of this subdivision.

4 SEC. 5. Section 266a of the Penal Code is amended to 5 read:

266a. Every person who, within this state, takes any 6 person against his or her will and without his or her consent, or with his or her consent procured fraudulent inducement misrepresentation, or purpose of prostitution, as defined in paragraph (2) of 10 subdivision (a) of Section 647, shall be punished by 12 imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000). 13

SEC. 6. Section 266e of the Penal Code is amended to 15 read:

266e. Every person who purchases, or pays any money or other valuable thing for, any person for the purpose of prostitution as defined in paragraph (2) of subdivision (a) of Section 647, or for the purpose of placing that person, for immoral purposes, in any house or place against his or her will, is guilty of a felony.

22 SEC. 7. Section 647 of the Penal Code is amended to 23 read:

- 647. (a) Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:
- (1) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.
- (2) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to engage, he or she manifests an acceptance of an offer 34 or solicitation to engage, regardless of whether the offer or solicitation was made by a person who also possessed 36 the specific intent to engage in prostitution. As used in this subdivision, "prostitution" includes any — sexual conduct lewd act between persons for money or other

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(3) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

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- (4) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.
- (5) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account 10 for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.
- (6) Who is found in any public place under the 15 influence of intoxicating liquor, any drug, controlled any 16 substance, toluene, or combination of 17 intoxicating liquor, drug, controlled substance, 18 toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, substance, toluene, or any combination of intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.
- (7) When a person has violated paragraph (6) of subdivision (a), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a 36 warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

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(A) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

- (B) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.
- (C) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.
- (8) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this paragraph, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.
- (9) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.
- (10) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.
- (11) Anyone who looks through a hole into a bathroom with the intent to invade the privacy of persons inside.
- (b) A person convicted of a violation of paragraph (2) of subdivision (a) shall be punished as follows:
- (1) Upon a first conviction, by imprisonment in a county jail for a period of not less than three months but not more than one year.
- (2) If the person has been convicted previously of this provision, by imprisonment in the state prison for a 36 period of not less than one year. A second conviction of this provision is a felony for the purposes of Sections 667 and 1170.23...
- (3) If the violation of this provision occurred within 39 1,500 feet of a home, school, church, park, or business, by

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1,000 feet of a private residence or the grounds of any public or private elementary, vocational, junior high, or high school, by a period of one year in addition to the punishment prescribed by paragraph (1) or (2).

SEC. 8. Section 647f of the Penal Code is amended to 6 read:

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647f. In any accusatory pleading charging a violation of paragraph (2) of subdivision (a) of Section 647, if the defendant has been previously convicted one or more 10 times of a violation of that paragraph or of any other offense listed in subdivision (d) of Section 1202.1, and in 12 connection with one or more of those convictions a blood 13 test was administered pursuant to Section 1202.1 or 1202.6 14 with positive test results, of which the defendant was 15 informed, the previous conviction and positive blood test 16 results, of which the defendant was informed, shall be charged in the accusatory pleading. If the previous 18 conviction and informed test results are found to be true by the trier of fact or are admitted by the defendant, the defendant is guilty of a felony.

SEC. 9. Section 647.1 of the Penal Code is amended to read:

647.1. (a) In addition to any fine assessed under 24 Section 647, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates paragraph (1) or (2) of subdivision (a) of Section 647, or, if the offense involves intravenous use of a controlled substance, paragraph (6) of subdivision (a) of Section 647, with the proceeds of this fine to be used in accordance with Section 1463.23.

- (b) In addition to any fine assessed under Section 647, the judge may assess a fine not to exceed five hundred dollars (\$500) against a person first convicted of a violation of paragraph (2) of subdivision (a) of Section 647. This fine shall be paid to the arresting law enforcement agency.
- (c) In addition to any fine assessed under Section 647, the judge may assess a fine not to exceed one thousand dollars (\$1,000) against a person suffering a repeat conviction of a violation of paragraph (2) of subdivision

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(a) of Section 647. This fine shall be paid to the arresting law enforcement agency.

- (d) The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.
- SEC. 10. Section 653.22 of the Penal Code is amended 8 to read:
- 653.22. (a) It is unlawful for any person to loiter in 10 any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.
- (b) Among the circumstances that may be considered 16 in determining whether a person loiters with the intent to commit prostitution are that the person:
 - (1) Repeatedly beckons to. stops, engages conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.
- (2) Repeatedly stops or attempts to stop 23 vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.
 - been convicted of violating this section, paragraph (1) or (2) of subdivision (a) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.
 - (4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.
- (5) Has engaged, within six months prior to the arrest 36 under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.
- 39 (c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in

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subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may considered in determining whether a person has the 5 requisite intent. Moreover, no one circumstance combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

9 SEC. 11. Section 784 of the Penal Code is amended to 10 read:

784. The jurisdiction of a criminal action:

- (a) For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping another, with intent, against his or her will, to cause him or her to be secretly confined or imprisoned in this state, or to be sent out of the state, or from one county to another, or to be sold as a slave, or in any way held to
- (b) For inveigling, enticing, or taking away any person 20 for the purpose of concubinage or prostitution, as defined in paragraph (2) of subdivision (a) of Section 647;

Is in any competent court within the jurisdictional 23 territory in which the offense was committed, or in the jurisdictional territory out of which the person upon 25 whom the offense was committed was taken or within the jurisdictional territory in which an act was done by the defendant in instigating, procuring, promoting, or aiding 28 in the commission of the offense, or in abetting the parties concerned therein.

- SEC. 12. Section 1001.10 of the Penal Code is amended to read:
- 1001.10. (a) The judge shall require any person 33 described in subdivision (b), as a condition of either placing the person on probation or of permitting the 34 35 person to participate in a drug diversion program to 36 agree to participate in an AIDS education program. Testing for AIDS antibodies shall be offered but no person described in subdivision (b) shall be required to be 38

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- (b) This section shall apply to any person who has either been placed on probation or granted diversion for, any of the following:
- (1) A violation of subdivision (a) of Section 11350 of the Health and Safety Code, subdivision (a) of Section 11377 of the Health and Safety Code, Section 11550 of the Health and Safety Code, Section 4143 or 4149 of the Business and Professions Code, or of subdivision (f) of Section 647 if the offense involves intravenous use of a controlled substance.
- 11 (2) A violation of paragraph (1) or (2) of subdivision 12 (a) of Section 647.
- SEC. 13. Section 1202.6 of the Penal Code is amended 14 to read:
- 1202.6. (a) Notwithstanding Sections 199.20, 199.21, 15 16 and 199.22 of the Health and Safety Code, upon the first conviction of any person for a violation of paragraph (2) 17 of subdivision (a) of Section 647, the court shall, before sentencing or as a condition of probation, order the defendant to complete instruction in the causes consequences of acquired immune deficiency syndrome 21 22 (AIDS) pursuant to subdivision (d) and shall order the defendant to submit to testing for AIDS in accordance with subdivision (e). In addition, the court shall refer a 25 defendant, where appropriate, to a program Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions 28 Code or to any drug diversion program, or both.
 - (b) Upon a second or subsequent conviction of a violation of paragraph (2) of subdivision (a) of Section the court shall, before sentencing, defendant to submit to testing for AIDS in accordance with subdivision (e).
- 34 (c) At the sentencing hearing of a defendant ordered 35 to submit to testing for AIDS pursuant to subdivision (a) 36 or (b), the court shall furnish the defendant with a copy of the report submitted pursuant to subdivision (e) and shall direct the clerk to note the receipt of the report by the defendant in the records of the case.

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If the results of the test described in the report are positive, the court shall make certain that the defendant understands the nature and meaning of the contents of the report and shall further advise the defendant of the penalty established in Section 647f for a subsequent violation of paragraph (2) of subdivision (a) of Section 647.

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(d) The county health officer in each county shall select an agency, or agencies, in the county that shall provide AIDS prevention education. The county health officer shall endeavor to select an agency, or agencies, provide **AIDS** prevention that currently education programs to substance abusers or prostitutes. If no agency 14 is currently providing this education, the county agency responsible for substance abuse shall develop an AIDS 16 prevention education program either within the agency or under contract with a community-based, nonprofit organization in the county. The county health officer shall forward to the courts a list of agencies selected for purposes of referral.

prevention education program An AIDS 22 services, at a minimum, shall include details about the transmission of human immunodeficiency virus (HIV), the etiologic agent for AIDS, symptoms of AIDS or AIDS-related conditions, prevention through avoidance 26 or cleaning of needles, sexual practices which constitute high risk, low risk, and no risk (including abstinence), and 28 resources for assistance if the person decides to take a test for the etiologic agent for AIDS and receives a positive 30 test result. The program also shall include other relevant medical and prevention information as it available.

(e) The court shall order testing of every defendant as 34 ordered pursuant to subdivision (a) or (b) for evidence of antibodies to the probable causative agent of acquired 36 immune deficiency syndrome. Notwithstanding Section 199.21 of the Health and Safety Code, written copies of 38 the report on the test shall be furnished to both of the following:

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1 (1) The court in which the defendant is to be 2 sentenced.

- (2) The State Department of Health Services.
- (f) Except as provided in subdivisions (c) and (g), the reports required by subdivision (e) shall be confidential.
- (g) The State Department of Health Services shall maintain the confidentiality of the reports received pursuant to subdivision (e), except that the department shall furnish copies of any such report to a district attorney upon request.

11 SEC. 14. Section 22659.5 of the Vehicle Code is 12 amended to read:

13 22659.5. (a) Notwithstanding any other provision of 14 law, the County of Alameda, any city in that county, the 15 County of Contra Costa, any city in that county, the 16 County of Kern, any city in that county, the County of San Diego, any city in that county, the County of Sacramento, 17 18 any city in that county, the City and County of San Francisco, the City of Signal Hill, the City of Long Beach, and the City of Los Angeles with respect to that portion of that city situated in the San Fernando Valley statistical 21 area, as described in subdivision (c) of Section 11093 of 23 the Government Code, may adopt an ordinance 24 establishing a five-year pilot program which implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used in the commission of an act in violation of Section 266h or 266i of the Penal Code or paragraph (2) of subdivision (a) of Section 647 of that code, and there is a conviction of Section 266h or 266i of 30 the Penal Code or paragraph (2) of subdivision (a) of Section 647 of that code, or a provision involving any lesser included offense to which the defendant enters a plea of guilty or nolo contendere as part of a plea 34 agreement subsequent to the defendant having been 35 charged with a violation of Section 266h or 266i of the 36 Penal Code or paragraph (2) of subdivision (a) of Section 647 of that code. 37

38 (b) In addition to the authority provided by 39 subdivision (h) of Section 22651, the ordinance may also 40 include procedures to enjoin and abate the declared

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nuisance by ordering the defendant not to use the vehicle again for purposes of violating Section 266h or 266i of the Penal Code or paragraph (2) of subdivision (a) of Section that code and authorizing the temporary 647 5 impoundment of the vehicle that the court has declared a nuisance if the defendant violates the order. The impoundment shall not exceed 48 hours.

(c) The only action that may be taken to enjoin and abate the declared nuisance are those actions specified in subdivision (b).

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- (d) Any procedures implemented pursuant section shall ensure that no vehicle shall be declared a nuisance if the vehicle is stolen, unless it is not possible to 14 reasonably ascertain the identity of any owner of the vehicle.
- 16 (e) This section shall remain in effect only until 17 January 1, 1999, and as of that date is repealed, unless a 18 later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.
- 20 SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California 21 22 Constitution because the only costs that may be incurred 23 by a local agency or school district will be incurred 24 because this act creates a new crime or infraction, 25 eliminates a crime or infraction, or changes the penalty 26 for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition 28 of a crime within the meaning of Section 6 of Article 29 XIII B of the California Constitution.
- 30 Notwithstanding Section 17580 of the Government 31 Code, unless otherwise specified, the provisions of this act 32 shall become operative on the same date that the act takes effect pursuant to the California Constitution.